

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'D': NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.1945/DEL/2022  
[Assessment Year: 2019-20]**

Tagit Pte Ltd., No.15, Changi Business Park Crescent, #05-03 Haite Building, Singapore-486006	vs	Deputy Commissioner of Income-tax, Corporate Circle-3(1), Delhi
<b>PAN-AAFCT9942E</b>		
Appellant		Respondent

Appellant by	Sh. Tapas Misra, Adv.
Respondent by	Sh. Vizay B. Vasanta, CIT-DR

<b>Date of Hearing</b>	<b>26.10.2023</b>
<b>Date of Pronouncement</b>	<b>.01.2024</b>

**ORDER**

**PER SAKTIJIT DEY, VP,**

The present appeal, at the instance of the assessee, assails the final assessment order dated 23.06.2022 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter 'the Act'), in pursuance to the directions of Learned Dispute Resolution Panel (in short 'DRP') pertaining to Assessment Year 2019-20.

2. Ground No.1, being general in nature does not require adjudication.

2. In ground No.2, the assessee has challenged the taxability of Rs.2,55,02,202/- as Fees for Included Service (FIS)/Fees for Technical Services(FTS).

3. Briefly the facts relating to this issue are, the assessee is a non-resident corporate entity and incorporated in Singapore and tax resident of Singapore. As stated by the Assessing Officer, the assessee is engaged in the business of providing management services and sales of software license to its customers in India. For the assessment year under dispute, the assessee filed its return of income on 30.09.2019 declaring income of Rs.2,55,02,202/- with Nil tax liability and claiming refund of the entire TDS amounting to Rs.41,50,226/-. The reason of showing nil tax liability, according to the assessee was, the receipts from the business activity in India are in the nature of business income and in absence of Permanent Establishment (PE) in India, are not taxable. In course of assessment proceeding, the Assessing Officer called upon the assessee to furnish the details and receipts earned in India. On examining the details, the Assessing Officer found that assessee had following receipts:-

- i. Rs.2,55,02,202/- towards Management Fees from Tagit India Pvt. Ltd.

- ii. Rs.1,60,00,000/- towards License Fees from AU Small Finance Bank Ltd.

4. In so far as Management Fee is concerned, the assessee submitted that the services are provided to the Indian subsidiary on remote basis from Singapore without any human intervention. It was further submitted that even assuming that the services rendered are of managerial, technical or consultancy nature, however, in course of rendition of such services, the assessee had not made available the technical knowledge, know how, skill, etc. to the service recipient. Therefore, the services cannot be treated as FIS in terms of Article 12(4)(b) of the India Singapore Double Tax Avoidance Agreement (DTAA). The Assessing Officer, however, was not convinced with the submission of the assessee. He observed that the assessee has not furnished any documents or details to demonstrate the nature of service rendered and the mode and manner in which they were rendered. Referring to the Management Services Agreement, the Assessing Officer observed that the services are in the form of management services for the benefit of the group in terms of standardization of corporate work of the group. He observed that being in the nature of managerial services, the fees

are taxable are as FTS in terms of section 9(1)(vii) of the Act. Proceeding further, he observed that in course of rendition of such services, the assessee has also made available technical knowledge, know-how, skill, etc. Thus, he held that in terms of Article 12(4) of the India Singapore DTAA, these are taxable as FTS. Accordingly, he proposed a draft assessment order.

5. Being aggrieved with the order of the Assessing Officer, the assessee raised objections before Ld. DRP. However, the Ld. DRP simply endorsed the view of the Assessing Officer.

6. We have considered rival submissions and perused the material available on record. We have also applied our mind to the decisions cited before us by learned counsel for the assessee. Undisputedly, in the assessment year under consideration, the assessee had received an amount of Rs.2,55,02,202/- from Indian subsidiary on account of rendition of management service. It is observed that the assessee has entered into an Inter Company Management Services Agreement with the Indian Subsidiary on 01<sup>st</sup> January 2017. On careful reading of the said agreement, a copy of which is placed at page 40 of the paper book, it is observed that the Indian Subsidiary had sought the following services from the assessee.:-

- ❖ General Management Services
- ❖ Product Strategy and Development Oversight
- ❖ Sales and Marketing Support and Oversight
- ❖ Financial Management and Control Support and Oversight
- ❖ Statutory and Tax Compliance support and Oversight
- ❖ Human Resources support and Oversight
- ❖ Customer and Relations Management Support and Oversight
- ❖ Project Management Support

7. The agreement further stipulates that the services will be rendered on remote basis from Singapore. For rendition of such services, the assessee receives certain amounts towards fees from the Indian subsidiary. The crucial issue requiring consideration is whether in course of rendition of such services, the assessee has made available technical knowledge, know-how, skill, etc. to the employees of the Indian Subsidiary, so as to enable the Indian Subsidiary to perform such services themselves without further aid and assistance of the assessee in

future. As could be seen, from the observations of the Assessing Officer, except making a general statement that the make available condition under Article 12 of the Income Tax Treaty is satisfied, he has failed to demonstrate or bring out on record any convincing reasoning to establish that, in course of rendition of services, the assessee has made available technical know-how, knowledge, skill, etc to the service recipient, so as to enable service recipient to perform such services independently by utilizing the technical know-how, knowledge, skill, etc acquired from the assessee.

8. Though, the Assessing Officer has alleged that the assessee has failed to furnish necessary details/documents, however, he has not elaborated what were the informations required from the assessee. Unfortunately, Ld. DRP has mechanically endorsed the view of the Assessing Officer without examining the issue both factually and legally with proper application of mind. Since, the Departmental Authorities have failed to demonstrate that the make available condition enshrined in Article 12(4)(b) of the tax treaty is satisfied, we are unable to sustain the addition of Rs.2,55,02,202/- as FTS/FIS. Accordingly, the Assessing Officer is directed to delete the addition.

9. The next issue arising for consideration in terms of Ground No.3 relates to addition of an amount of Rs.1,60,00,000/- received from AU Small Finance Bank Ltd. towards sale of software as FTS.

10. Briefly the facts are as, stated by the Assessing Officer, in the year under consideration, the assessee had received an amount of Rs.1,60,00,000/- from M/s AU Small Finance Bank Ltd. towards sale of Mobeix Platform V6.10, mobile banking application for the purpose of accessing the server software. While examining the issue in course of assessment proceeding, the Assessing Officer concluded that receipts from sale of software are to be treated as FTS as the assessee has provided platform to the bank which involves complex use of technology and, in turn, require some kind of specialised training in order to make them usable. He observed that these are not one-way interactions wherein the end-user is a mute participant at the receiving end. Instead, these are two way interactions wherein the end-user has the choice as well as the ability to decide how such services are to be utilised by it independently. He observed that the assessee company provided necessary digital infrastructure to keep it running seamlessly. Thus, he held that

the assessee company is not selling a standard off the shelf/non-customised/electronically downloadable software. Rather, it is offering comprehensive service experience or solutions with the help of the technology embedded in its software. In this context, the Assessing Officer observed that absence of human intervention would not be enough to not recognize the receipts as FTS. Thus, ultimately, he held that the receipts are in the nature of FTS. Needless to mention, learned DRP endorsed the view discussed by the Assessing Officer.

11. We have considered rival submissions and perused the material available on record. On perusal of software license agreement dated 28<sup>th</sup> December, 2018, a copy of which is placed at page 26 of the Paper book, it is observed that what the client in India purchases from the assessee are software licenses, over which the assessee owns Intellectual Property Rights (IPRs). The agreement further states that end users are the customers of the client, who are using the software. Towards sale of such software, the assessee received license fee as contemplated under the license agreement. Further, the definition of software means, assessee's proprietary computer programme specified in schedule "A" of the agreement in respect of which the client is

granted license, which has to be loaded to the computers of the client. In clause 2 of the agreement, it is specifically provided that the assessee grants a perpetual, non-exclusive and non-transferable license to install and use the software on the system. It further provides the right to make a full and complete copy of the software for archival or re-build purposes only (limited to a maximum of two copies), provided that all copies of the software and the licensed materials will be subject to the terms of the agreement. Clause 2.2 of the agreement provides that the software can only be installed in the system situated in the premises specified in Schedule-B and further, only the legal entities set out in Schedule-B may use the software. At no time shall any legal entity other than that named in Schedule B be permitted to use the Software. Schedule 'A' provides list of software as under:-

- i. Server Software: Mobeix Platform v6.10
  - ii. Mobile Banking application for the purpose of accessing the Server Software: Mobeix Mobile Client v6.10 and Desktop client v6.10.
  - iii. Mobile Platform Binaries v6.10 for iOS and Android.
12. Schedule 'B' reads as under:-
- i. Premises where the System is situated (Clause 2.2(a), Jaipur, Rajasthan, India.

- ii. Name of legal entities licensed to use the Software (Clause 2.2(b), AU Small Finance Bank Limited.
- iii. Limits to Users (Clause 2.2.(c) 10,00,000  
Users must be employees of the named legal entities above and limited to 10,00,000 number of users.
- iv. Limits to End User (Clause 2.2(c)):

End users must be customers of the named legal entities above and limited to 10,00,000 number of End Users.

The number of End Users is counted as the number of end users per application found in the software database. For the avoidance of doubt, if the same customer is recorded in two (2) different applications, then for the purpose of this Agreement, it would be deemed that there are two (2) Ender Users.”

13. Schedule ‘C’ provides for the license fee of Rs.1,60,00,000/- for first 10,00,000 users. Even, the invoice raised by the assessee on AU Small Finance Bank Limited clearly shows the sale of mobile application license fee. Thus, it is explicit from the license agreement that what the assessee has sold are software licences and not any services. Therefore, in the first place, the Departmental Authorities have committed error in treating the receipts from the sale of software as FTS. Keeping in perspective the facts available on record, it would have been understandable had the Departmental Authorities taxed the receipts as royalty, which of course, can be a debatable issue in view of ratio laid down by the Hon’ble Supreme Court in the case of

Engineering Analysis Centre of Excellence (P.) Ltd . [2021] 125 taxmann.com 42 (SC). However, one need not go into that aspect as the singular case of the Departmental authorities is that the receipts are in the nature of FTS, which findings. in our view, is contrary to the facts and material available on record, hence, totally unacceptable. Accordingly, we hold that the amount in dispute is not taxable as FTS. The Assessing Officer is directed to delete the addition. This ground of the assessee is allowed.

14. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 17/01/2024.

**Sd/-**

**[B.R.R. KUMAR]**  
**ACCOUNTANT MEMBER**  
**Delhi; Dated: 17/01/2024.**

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

**Sd/-**

**[SAKTIJIT DEY]**  
**VICE PRESIDENT**

Asst. Registrar,  
ITAT, New Delhi